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Fish and Game Commission



Sonke Mastrup, Executive Director
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October 24, 2012

TO ALL AFFECTED AND INTERESTED PARTIES:

This is to provide you with a copy of the notice of proposed regulatory action resulting from the Commission's February 2, 2012, meeting, when it made a finding pursuant to Section 2075.5, Fish and Game Code, that listing the southern mountain yellow-legged frog (*Rana muscosa*) as Endangered under CESA is warranted; and listing the Sierra Nevada yellow-legged frog (*Rana sierrae*) as Threatened under CESA is warranted. The notice of proposed regulatory action will be published in the California Regulatory Notice Register on October 26, 2012.

Please note the date of the public hearing related to this matter and associated deadlines for receipt of written comments.

Mr. Stafford Lehr, Fisheries Branch, Department of Fish and Game, phone (916) 327-8840, has been designated to respond to questions on the substance of the proposed regulations.

Sincerely,

Sheri Tiemann
Staff Services Analyst

Attachment

TITLE 14. Fish and Game Commission
Notice of Proposed Changes in Regulations

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 2070 and 2075.5 of the Fish and Game Code and to implement, interpret or make specific sections 1755, 2055, 2062, 2067, 2070, 2074.6, 2075.5, 2077, 2080, 2081 and 2835, of the Fish and Game Code, proposes to amend Section 670.5, Title 14, California Code of Regulations, relating to Animals of California Declared to Be Endangered or Threatened.

Informative Digest/Policy Statement Overview

The Department of Fish and Game recommends that the Commission amend subsection (a)(3) of Section 670.5 of Title 14, CCR, to add the southern mountain yellow-legged frog (*Rana muscosa*) to the list of endangered animals, and amend subsection (b)(3) of Section 670.5 of Title 14, CCR, to add the Sierra Nevada mountain yellow-legged frog (*Rana sierrae*) to the list of threatened animals.

In making the recommendation to list the mountain yellow-legged frog (*Rana muscosa* and *Rana sierrae*) pursuant to CESA, the Department identified the following primary threats:

1) introduction and persistence of non-native trout populations to habitats occupied by mountain yellow-legged frog; 2) introduction and persistence of the amphibian disease chytridiomycosis; and 3) catastrophic natural events impacting relictual southern California populations of southern mountain yellow-legged frog (*Rana muscosa*). More detail about the current status of the mountain yellow-legged frog (*Rana muscosa* and *Rana sierrae*) can be found in the "Report to the California Fish and Game Commission, "A Status Review of the Mountain Yellow-Legged Frog (*Rana muscosa* and *Rana sierrae*)" (Department of Fish and Game, November 28, 2011).

The proposed regulation will benefit the environment by protecting the southern mountain yellow-legged frog (*Rana muscosa*) as an endangered species and the Sierra Nevada yellow-legged frog (*Rana sierrae*) as a threatened species.

The Commission does not anticipate any non-monetary benefits to worker safety, the prevention of discrimination, the promotion of fairness or social equity, or the increase in openness and transparency in business and government.

The proposed regulations are neither inconsistent nor incompatible with existing state regulations. No other state entity has the authority to list threatened and endangered species.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at the Hilton San Diego-Mission Valley, 901 Camino del Rio South, San Diego, California, on Wednesday, December 12, 2012 at 8:30 a.m., or as soon thereafter as the matter may be heard. Written comments may be submitted at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@fgc.ca.gov. **Written comments mailed, faxed or e-mailed to the Commission office, must be received before 5:00 p.m. on December 7, 2012.** All comments must be received no later than December 12, 2012, at the hearing in San Diego, CA. If you would like copies of any modifications to this proposal, please include your name and mailing address.

The regulations as proposed in strikeout-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Sonke Mastrup, Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct

analysis fully meets the intent and language of both statutory programs.

Designation of the southern mountain yellow-legged frog (*Rana muscosa*) and the Sierra Nevada mountain yellow-legged frog (*Rana sierrae*) as endangered and threatened, respectively, will subject it to the provisions of CESA. CESA prohibits take and possession except as may be permitted by the Department.

Listed status is not expected to result in any significant adverse economic effect on small business or significant cost to private or public entities undertaking activities subject to the California Environmental Quality Act (CEQA). Prior to making any discretionary approval of a project subject to CEQA, public agencies are to consider de facto endangered species to be subject to the same requirements under CEQA as though they were already listed by the Commission in Sections 670.2 or 670.5 of Title 14, CCR (CEQA Guidelines, Section 15380). All populations of mountain yellow-legged frog have qualified for protection under CEQA Guidelines Section 15380 since its designation by the Department in 1994 as a species of special concern.

Required mitigation as a result of public agency compliance with CEQA, whether or not the species is listed by the Commission, may increase the cost of a project. Such costs may include, but are not limited to, purchasing off-site habitat, development and implementation of management plans, establishing new populations, installation of protective devices such as fencing, protection of additional habitat, and long-term monitoring of mitigation sites. Public agencies may also require additional actions should the mitigation measures fail, resulting in added expenditures by the project proponent. If the mitigation measures required by the public agency do not minimize and fully mitigate project effects on a listed species as required for the Department to issue an incidental take permit pursuant to CESA, listing could increase business costs by requiring measures beyond those required by CEQA.

- (b) Impact on the Creation or Elimination of Jobs within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California; Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment::

The Commission does not anticipate any impacts on the creation or elimination of jobs, the creation of new business, the elimination of existing businesses or the expansion of businesses in California.

The Commission does not anticipate benefits to the health and welfare of California residents or to worker safety.

The Commission anticipates benefits to the environment by the protection of the mountain yellow-legged frog (*Rana muscosa* and *Rana sierrae*).

- (c) Cost Impacts on a Representative Private Person or Business:

Designation of threatened or endangered status, per se, would not necessarily result in any significant cost to private persons or entities undertaking activities subject to CEQA. CEQA presently requires private applicants undertaking projects subject to CEQA to consider de facto endangered (or threatened) and rare species to be subject to the same protections under CEQA as though they are already listed by the Commission in Sections 670.2 or 670.5 of Title 14, CCR (CEQA Guidelines Section 15380).

Any added costs should be more than offset by savings that would be realized through